



Paper No. 10

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MAIL

MAR 27 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600SUPPLEMENTAL
DECISION ON PETITION

In re Application of:
Allen Topping, et al.
Application No.: 09/207,339
Filed: December 8, 1998
For: AUTOMATED IDENTIFICATION
THROUGH ANALYSIS OF OPTICAL
BIREFRINGENCE WITHIN NAIL BEDS

This is a supplemental decision in response to the paper filed March 10, 2003 and to the amendment and Change of Address filed December 9, 2002. The papers are being treated as a request for reconsideration of the decision mailed October 11, 2002.

This application is in an abandoned status for failure to respond to the Office action mailed May 23, 2001. A Notice of Abandonment has not been mailed.

Subsequent to the mailing of the Office action, applicant filed a petition for one month extension which was received by the Patent and Trademark Office on August 13, 2001, which then established a new due date for response of September 23, 2001. On October 5, 2001, applicant filed a petition for a two months extension of time. However, the two petitions taken together did not equate to a proper request for a three months extension of time. Applicant should have properly requested and paid the extension of time fees for a three month extension of time in order to establish a new date of response of November 23, 2001. However, the request for two months extension of time filed on October 5, 2001 was deficient and therefore only established a new due date for response of October 23, 2001.

The paper filed on July 31, 2002 includes evidence by way of a copy of three post card receipts showing receipt by the Office of the two requests for extension of time and "Response to Action". The post card receipt showing receipt of the response has a receipt date of February 4, 2002 stamped thereon. The petition also includes an unsigned copy of the response. The February 4, 2002 date shown on the copy of the post card acknowledging receipt of the response is after the six month statutory due date of November 23, 2001. However, the copy of the response has a "Notice of Mailing" thereon (also unsigned) showing a mailing date of November 20, 2001. *Since this date is after the expiration of the extended period for response, the case is abandoned.* The Office regrets the failure to inform applicant of this deficiency in the earlier decision.

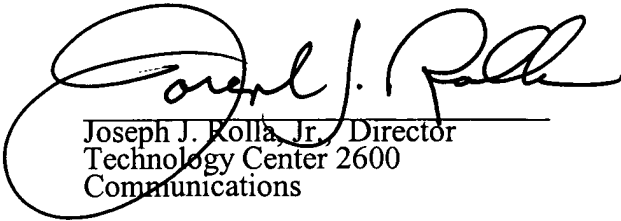
The request for reconsideration of the petition to withdraw the holding of abandonment is **DENIED**.

In a telephone call with Mr. Topping on March 13, 2003, it was discussed that applicants may consider filing Power of Attorney paperwork assigning Power of Attorney to any one of the applicants (for purposes of prosecuting the applications) in order to simplify the signature requirements for responses filed by applicants. Applicant was also advised of the abandoned status of this application. It was discussed that applicant would be contacted by an Office of Petitions attorney for assistance in filing a petition for revival of the instant application under 37 CFR 1.137.

A Notice of Abandonment is being mailed herewith.

Since the request for Change of Address filed December 9, 2002 has been properly ratified by all inventors, it has been entered. All future correspondence will be directed to the above-listed address, unless otherwise notified.

The file is being returned to the files repository.



Joseph J. Kolla, Jr., Director
Technology Center 2600
Communications

Attachment: Notice of Abandonment

Notice of Abandonment

Application No.

09/207,339

Applicant(s)

Topping et al.

Examiner

Art Unit

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 5/23/01.
 - (a) ☒ A reply was received on 1/31/02 and 12/9/02 (with a Certificate of Mailing or Transmission dated 1/31/02), which is after the expiration of the period for reply (including a total extension of time of 2 month(s)) which expired on 10/24/01.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted issue fee of \$ _____ is insufficient. A balance of \$ _____ is due.

The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d) is \$ _____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed new formal drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

KRISTA ZELE

SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 2600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.